

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE:)	
)	CASE NO: 23-00656-DSC11
PREMIER CAJUN KINGS, LLC)	CHAPTER: 11
)	
DEBTOR.)	

FALLBROOK MHP, LLC'S MOTION FOR RELIEF FROM STAY

FALLBROOK MHP, LLC ("Landlord"), out of an abundance of caution and pursuant to 11 U.S.C. §§ 362(b)(10) and 541(b)(2) of 11 U.S.C §§ 101 et seq. ("the Bankruptcy Code") moves this Court for relief from the automatic stay, if any such stay is in effect, to permit Landlord to request and execute on a writ of possession against its former tenant Debtor Premier Cajun Kings, LLC ("Debtor") from the nonresidential real property located at 2203 Moody Pkwy, Leeds, AL 35004 (the "Premises"). In support of this Motion, Landlord relies on the record, the Affidavit of Brad Dunn in Support of Fallbrook MHP, LLC's Motion for Relief from Stay attached hereto as Exhibit 1 (the "Dunn Affidavit"), and further states to wit:

I. JURISDICTIONAL INFORMATION.

1. On March 14, 2023 (the "Petition Date"), Debtor Premier Cajun Kings, LLC ("Debtor") commenced this case, filing for bankruptcy protection under Chapter 11 of the Bankruptcy Code. [Doc. 1].

2. This Court has jurisdiction over this Motion pursuant to the Bankruptcy Code and 28 U.S.C. § 157(b)(2)(A) and (G). Venue of the Debtor's Chapter 11 case and this Motion in this district is proper pursuant to 28 U.S.C § 1409. The statutory predicate for the relief requested herein is Bankruptcy Code § 362.

II. FACTS.

3. On or before February 13, 2019, Landlord and Debtor executed that certain lease (the “Lease”) for certain non-residential real property more specifically identified in the Lease (the “Premises”). (Dunn Aff. ¶ 2.) A true and correct copy of that lease is appended hereto as Exhibit “A”.

4. Subsequently, Debtor defaulted on its obligations to pay rent due to Landlord under the terms of the Lease. (Dunn Aff. ¶ 3 and 4.)

5. On or about December 15, 2022, counsel for Landlord informed Debtor that it has elected to terminate the Lease as a result of Debtor’s default under the Lease, and demanded that Debtor surrender possession of the Premises and pay all rent and other charges. (Dunn Aff. ¶ 3 and 4). A true and correct copy of that letter is appended hereto as Exhibit “B”.

6. On January 10, 2023, Landlord filed an unlawful detainer complaint against the Debtor in the District Court of St. Clair County, Alabama (the “District Court”), Case No. 75-DV-2023-900014 (the “Unlawful Detainer”) seeking possession only. (Dunn Aff. ¶ 5.) On or about March 1, 2023, the District Court entered a judgment for possession in favor of Landlord. A true and correct copy of the Order is appended hereto as Exhibit “C”.

7. As of today’s date, Debtor still has not vacated premises. Just day prior to the filing date, Landlord filed in the District Court for an application for a writ of possession. A true and correct copy of the application for possession is appended hereto as Exhibit “D”.

8. Landlord contends that the automatic stay does not prohibit Landlord from executing on the Default Judgment for Possession only. However, out of an abundance of caution, Landlord seeks relief from the automatic stay to execute on the Judgment and to regain possession of the Premises.

III. LEGAL SUPPORT.

9. Bankruptcy Code § 362(a)(2) provides that the filing of a bankruptcy petition “operates as a stay, applicable to all entities, of... the enforcement, against the debtor or against property of the estate, of a judgment obtained before commencement of the case under this title...” 11 U.S.C. § 362(a)(2).

10. Bankruptcy Code § 365(c)(3) provides that “[t]he trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if... [s]uch lease is of nonresidential real property and has been terminated under applicable non-bankruptcy law prior to the order for relief.” 11 U.S.C. § 365(c)(3).

11. Because the Lease itself (and not simply Debtor’s right to possession of the Premises) was terminated before the Petition Date, the Lease does not constitute property of the estate and therefore the automatic stay does not apply.¹ See *In re Moore*, 290 B.R. 851, 909 (Bankr. N.D. Ala. 2003); *In re Western Healthcare, LLC*, 2010 WL 5300939, *3 (Bankr. N.D. Ala. 2010).

12. Additionally, Bankruptcy Code § 365(b)(10) further clarifies Bankruptcy Code § 365(a)(1) and provide that there is no stay in effect as to “any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated terms of the lease before the commenced of or during a case under this title to obtain possession of such property.” Accordingly, even if the Lease was property of the estate, there would be no stay in effect against Landlord’s action to regain possession of the Premises. See *Western Healthcare, LLC*, 2010 WL 5300939 at *3.

¹ *In re Morgan*, 181 B.R. 579 (Bankr. N.D. Ala. 1994) involved a residential lease and may be inapplicable but the lease was terminated pre-petition.

13. Prior to the Petition Date, the Lease had been terminated. Accordingly, Bankruptcy Code §§ 365(b)(10) and 541(b)(2) specifically provide that the automatic stay does not apply to the Landlord's attempts to obtain possession of the Premises for the Lease.

14. Out of an abundance of caution, however, Landlord seeks relief from the automatic stay to execute on the Default Judgment by obtaining a writ of possession for the Premises.

WHEREFORE, PREMISES CONSIDERED, Movant prays that this Court issue an Order granting Fallbrook MHP, LLC relief from the automatic stay so that it can execute a writ of possession on the Premises by entry of an order in substantially the same form as the proposed order attached hereto as Exhibit "2", including a waiver of the stay established by Rule of Bankruptcy Procedure 4001(a)(3), and that Fallbrook MHP, LLC be granted such other and further relief as this Court deems just and appropriate.

By: /s/ E.B. Harrison Willis
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion was served upon the following via electronic means or by mailing same by United States First Class Mail in a properly addressed envelope with adequate postage affixed thereon to insure delivery, addressed as follows:

Per the attached mailing matrix And the below listed

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Done this 3rd day of April, 2023.

By: /s/ E.B. Harrison Willis
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Attorney for FALLBROOK MHP, LLC

Label Matrix for local noticing
126-2
Case 23-00656-DSC11
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Birmingham
Mon Apr 3 14:09:16 CDT 2023

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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

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IPFS Corporation
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State of Alabama Dept of Revenue
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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)AIM Associates Capital Group, LLC

(u)FORD MOTOR CREDIT COMPANY, LLC.

(u)Official Committee of Unsecured Creditors

(u)PNC Bank, N. A.

(u)Popeye's

(u)Renasant Bank

(u)Santa Cruz Land and Cattle Company

(d)Internal Revenue Service
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(d)Kemco Facilities Services LLC
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End of Label Matrix
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ypassed recipients 9
otal 146